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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,
Plaintiff and Respondent,
v.
TERRY LEO KRAMER,
Defendant and Appellant.

A155604
(Sonoma County
Super. Ct. Nos. SCR-713195-1, SCR-
717430-1)

In two separate cases, defendant was charged with felony possession of a controlled substance with a prior conviction for murder. In each case, defendant pled no contest to the charged felony. The trial court sentenced him to a total of seven years in state prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

During a search of defendant's person on February 25, 2018, Petaluma police found 5.15 grams of methamphetamine.¹

A first amended felony complaint was filed in case No. SCR-713195-1, on February 27, 2018, charging defendant with felony possession of a controlled substance with a prior conviction for a homicide offense, or an attempted homicide offense. (Health & Saf. Code, § 11377, subd. (a).) It was alleged the prior murder conviction qualified as a prior under the "Three Strikes" law. (Pen. Code, §§ 667, subds. (d), (e);

¹ Because both cases were resolved by plea, we briefly summarize the facts from the probation report.

1170.12, subds. (b), (c).) It was further alleged defendant suffered a prior prison term for felon owning, purchasing, receiving, or possessing a firearm. (Pen. Code, §§ 29800, subd. (a)(1); 1170, subd. (h).)

On April 18, 2018, defendant pled no contest to the possession charge with the murder prior and admitted the three strikes prior conviction. Judge Julie Conger indicated she would place defendant on three years of felony probation. Judge Conger then agreed to consider reducing the felony to a misdemeanor upon defendant completing six months in county jail. The deputy district attorney struck the “prison priors.” Following defendant’s failure to appear for sentencing and defense counsel’s subsequent unavailability, the matter was set for sentencing on July 12, 2018.

Meanwhile, on June 23, 2018, following a short pursuit, a Petaluma police officer located 6.05 grams of methamphetamine and 3.15 grams of marijuana on defendant.

A felony complaint was filed on June 26, 2019, in case No. SCR-717430-1, charging defendant with felony possession of a controlled substance with a prior conviction for a homicide offense or an attempted homicide. (Health & Saf. Code, § 11377, subd. (a).) The complaint further alleged two strike priors, an on-bail enhancement connected to case No. SCR-713195-1 (Pen. Code, § 12022.1) and misdemeanor resisting arrest (Pen. Code, § 148, subd. (a)(1)).

On July 26, 2018, after a discussion was held with Judge Conger in chambers, she declined to follow the indicated sentence in case No. SCR-713195-1 of three years of formal probation, citing defendant’s failure to appear and his subsequent arrest for possession of methamphetamine. At this time, defendant entered an *Arbuckle*² waiver, giving up his right to be sentenced by Judge Conger. Both cases Nos. SCR-713195-1 and SCR-717430-1 were transferred to a different department. The record does not reflect that defendant, either in a written motion or orally, ever sought to withdraw his plea in case No. SCR-713195-1.

² *People v. Arbuckle* (1978) 22 Cal.3d 749 (*Arbuckle*).

In August 2018, defendant pled no contest in case No. SCR-717430-1 to possession of methamphetamine with a prior conviction for homicide or attempted homicide and misdemeanor resisting arrest. He admitted two strike priors, two prison term priors, and the on-bail enhancement.

Defendant subsequently filed a *Romero*³ motion in both cases, asking the sentencing court to strike his prior convictions and to consider placing him on probation. Before imposing sentence on September 20, 2018, Judge Thistlethwaite denied defendant's *Romero* motion because, "you have a 187 [(murder)] in your background. You continue to offend constantly. Looking at your record, I think that over this last 36 years, there was a two-year period where you remained free of any kind of custodial or criminal history involvement." Considering defendant's entire history and his prospects, the court concluded defendant presented a danger when he is under the influence of alcohol and drugs. Thereafter, the court sentenced defendant to seven years in state prison, calculated as follows: in case No. SCR-717430-1—the low term of 16 months, doubled as a second strike to 32 months for the possession of methamphetamine with a murder prior, plus 2 years consecutive for the on-bail enhancement, plus 1 year consecutive for the prison term prior, the other being stricken; and in case No. SCR-713195-1—16 months consecutive for possession of methamphetamine with murder prior (one-third the middle term of 24 months 8 months, doubled as a second strike). The court also imposed various fines and assessments.

Defendant filed timely notices of appeal in both cases.

DISCUSSION

Defendant's counsel has filed a brief setting forth the facts of the case but advising the court under the authority of *People v. Wende* (1979) 25 Cal.3d 436, no issues were found to argue on defendant's behalf. Counsel has also apprised us in his declaration that he has notified defendant he can file a supplemental brief with this court. No supplemental brief has been received.

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we have independently examined the record to see if any arguable issue is present. We have found none. By entering a plea of no contest, defendant admitted the sufficiency of the evidence establishing the crimes, and therefore is not entitled to review of any issue going to the question of guilt or innocence. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.)

Defendant was ably represented by counsel throughout the proceedings including at sentencing where counsel vigorously argued that defendant was a drug addict who possessed very small amounts of methamphetamine for personal use. Counsel then asked the court to “strike [defendant’s] strike, find that this is an unusual case,” and “give him an opportunity to enroll in the programs for which he has been accepted.”

We further find the trial court had ample reasons for denying defendant’s *Romero* motion in view of his 36 years of “custodial or criminal history.” Finally, we find no meritorious sentencing issues requiring reversal of the judgment. After Judge Conger told defendant she would not sentence him to three years’ formal probation as previously indicated, he never sought to withdraw his plea in case No. SCR-713195-1, and instead entered an *Arbuckle* waiver agreeing to be sentenced by a different judge. In view of defendant’s extensive criminal history, his seven-year sentence was more than justified.

In sum, we agree with defendant’s counsel that no issues are present undermining defendant’s no contest pleas or sentence.

DISPOSTION

The judgment is affirmed.

Margulies, J.

We concur:

Humes, P. J.

Sanchez, J.

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People v. Kramer